IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 19-06-2006

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

THE HONOURABLE MR.JUSTICE AR.RAMALINGAM

AND

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

WRIT PETITION Nos.16669 OF 1999, 3733 TO 3737
AND 14722 OF 2001

W.P.No.16669 OF 1999 :

M/s.Vairavikulam Lime Products Private Limited,
E-47/1, 17th Cross Street,
Besant Nagar,
Chennai-600 090. ... Petitioner

-vs-

1.Government of India,
Ministry of Industry,
Department of Industrial Development
SSI (P) Section,
Udyog Bhavan,
New Delhi.

2.Director,
Industries Department,
Thattan Chavadi,
Pondicherry.

3.The Secretary,
Industries Department,
Pondicherry.

4.The Secretary,
Department of Power,
Pondicherry.

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5.The Superintending Engineer,
Electricity Department,
Pondicherry. ... Respondents

WP NOS. 3733 TO 3737 OF 2001

M/s. Henkel Spic India Ltd.,
Peralam Main Road, Thirunallar
Karaikal 609 607. Pondicherry ... Petitioner in WP 3733/2001

M/s. MEIRS PHARMA (INDIA) PVT
LTD, 3, CHINNA SALAI ROAD,
RAYANPALAYAM,
VARICHIKUDY PO KARAIKAL 609 609 ... Petitioner in WP 3734/2001

M/s. ADITHYA FERRO ALLOY
1070 A SATHY ROAD
OPP. TEXTILE COMPANY
GANAPATHY, COIMBATORE 641 006... Petitioner in WP NO. 3735 of 2001

M/S KANYAKA FINE WELD LTD.,
R.S.NO. 83/1 NAGORE MAIN ROAD,
MELAVANJORE,T.R.PATINAM
KARAIKAL 611 002 ...Petitioner in W.P.No. 3736 of 2001

M/S VAIGAI INDUSTRIES (INDIA)
PRIVATE LTD.,
R.S.NO. 32/1 & 32/2
MELAKASAKUDY VILLAGE,
NEDUNGADU COMMUNE,
KARAIKAL 609 603 ...petitioner in W.P No. 3737 of 2001

W.P. NO. 14722 OF 2001

H& R JOHNSON (INDIA) LTD.,
PLOT NO. 143 THIRUNALLAR
AMBAGARATHUR ROAD,
TUENNARGUDI, SELLORE POST,
KARAIKAL 609 607
REP BY V.SRINIVASA RENGAN
GENERAL MANAGER (OPERATION)...Petitioner in W P NO. 14722 of 2001

-VS-

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1.GOVERNMENT OF INDIA
MINISTRY OF INDUSTRY
DEPARTMENT OF INDUSTRIAL
DEVELOPMENT
SSI (P) SECTION,
UDYOG BHAVAN, NEW DELHI

2.THE SECRETARY,
INDUSTRIES DEPARTMENT,
PONDICHERRY

3.THE SUPERINTENDING ENGINEER,
ELECTRICITY DEPARTMENT,
PONDICHERRY. ...RESPONDENTS IN W.P NOS 3733 TO 3737 AND 14722 OF 2001

WP NOS. 16669 of 1999 and 14722 of 2001

Petition under Article 226 of the Constitution of India praying to issue a writ of delcaration declarating that the petitioner could be entitle to enjoy power subsidy for remaining periods of 4 years in terms of notification of the 1st Respondent in G.O. RT. NO. 9/91 Industries, dated 11.02.1991 and consequently direct the respondents to forthwith extend to the petitioner the benefit of power subsidy in respect of the petitioners' Industry respectively.

WP NOS. 3733 TO 3737 OF 2001

Petition under Article 226 of the Constitution of India praying to issue a writ of certiorified Mandamus calling for records of the 2nd Respondent in letter No. 1-13/6526/Ind/ADA/A6/2000 Dated 05.10.2000 quash the same and consequently direct the respondents to forthwith extend the power subsidy for remaining period of two years to the petitioner Industry in WP 3733 and 3734 of 2001 and of 5 years to the petitioner Industry in WP 3735 to 3737 of 2001 respectively.

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For petitioner : Mr.R.Muthukumarasamy,
Senior Counsel,
for Mr.C.S.Krishnamoorthy,
assisted by Mrs.R.Thenmozhi
in W.P.Nos.16669 of 1999 and 3733 to 3736 & 14722 of 2001. and Ms. Abdul Saleem for M/s. Anand Abdul Vinod Associates in WP 3737/01

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For respondent No.1 : Mr.T.S.Sivagnanam,
Senior Central Government
Standing Counsel. in all WPs

For respondents 2 to 5 : Mr.K.K.Sasidharan,
Additional Government Pleader (Pondy)
in WP 16669/99
For Respondents 2 and 3 in WP 3733 to 3737 and
14722/2001

O R D E R

M.KARPAGAVINAYAGAM,J.

The common question that arises for consideration in these batch of Writ Petitions, which has been referred to this Full Bench, is as follows :

> "Whether the order of the Government of Pondicherry, in G.O.Rt.No.30, Industries, dated 28.05.1997, withdrawing its earlier order in G.O.Rt.No.9 of 1991, Industries, dated 11.02.1991, granting Subsidy Incentive Scheme to the industrial units for five years, even before the expiry of the said period, is valid or not ?"

2. The short facts, leading to the reference of the matter to this Full Bench, are as follows :

"(i) Writ petitioners are industries, situated in Karaikal and Mahe regions of the Union Territory of Pondicherry.

(ii) The Government of Pondicherry called upon the promoters to set up industries within the Union Territory of Pondicherry, promising certain incentives and various concessions.

(iii) On 11.02.1991, the Government of Pondicherry issued an order in G.O.Rt.No.9 of 1991, providing for a fresh scheme of electricity subsidy tariff to all industries, which are energised on or after 01.03.1991 in Karaikal and Mahe regions, in the nature of incentives, offered to encourage setting up of industries, for a period of five years.

(iv) The petitioners sought to act upon the above incentive scheme and set up industries in the backward regions of Karaikal and Mahe regions of Pondicherry and commenced their production, after investing huge sums, on

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the assumption that they would be given the benefit of the above scheme for the full term of five years.

(v) However, by a subsequent order in G.O.Rt.No.30, Industries, dated 28.05.1997, the Subsidy Incentive Scheme was withdrawn by the Government of Pondicherry, even before the expiry of five year period.

(vi) Based on the above order, the Government of Pondicherry discontinued the tariff concession, given to the petitioners.

(vii) It is, under those circumstances, Writ Petitions were filed by the petitioners in the year 1999, challenging the same.

(viii) A learned single Judge of this Court disposed of the said Writ Petitions on 12.07.2000, directing the petitioners to approach the Government of Pondicherry and make a representation which would be disposed of by the Government within a stipulated period.

(ix) Accordingly, the petitioners made representations to the Government, contending that they had acted on the basis of tariff concession in G.O.Rt.No.9 of 1991 and altered their position and requesting the Government to extend the benefits for the remaining period. However, the Government of Pondicherry rejected the said representations, by an order dated 05.10.2000. Thereupon, the petitioners have filed these batch of Writ Petitions, seeking to quash the orders passed by the Government, by holding that the withdrawal of tariff concession is invalid in law and consequently to direct the Government of Pondicherry to extend the tariff concession for the full period of five years.

(x) In the meantime, one of the industries by name M/s.Isas Thermo Alloys, instead of approaching the Government by making a representation, straightaway filed a writ petition in W.P.No.8010 of 1999, immediately after passing of the withdrawal order, dated 28.05.1997.

(xi) The said Writ Petition was dismissed by the learned single Judge, mainly on the ground that the writ petitioner had not set up the unit and no production was commenced and, therefore, he was not entitled to tariff concession.

(xii) Challenging the said order, the above industry, namely, M/s.Isas Thermo Alloys filed W.A.No.2081 of 1999 and the same was dismissed by the First Bench on 14.01.2000, holding that the said order of withdrawal by Pondicherry Government is valid.

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(xiii) Thereupon, these batch of writ petitions, filed by the persons who failed before the Government of Pondicherry, came up for hearing before the learned single Judge, Justice K.P.Sivasubramaniam, as he then was.

(xiv) At that time, it was brought to the notice of the learned single Judge that already the issue in question had been decided by the First Bench in W.A.No.2081 of 1999, by the order dated 14.01.2000. The learned single Judge, finding that the First Bench, in W.A.No.2081 of 1999, did not take into consideration the Supreme Court decision in Pawan Alloys case, reported in 1997 (7) SUPREME COURT CASES 251, thought it fit to refer the matter to a Larger Bench, as the Pawan Alloys case would squarely apply to the facts of the present case and, as such, the decision taken by the First Bench in W.A.No.2081 of 1999 requires reconsideration.

(xv) That is how all these matters have been placed before this Full Bench, by the orders of the Hon'ble Chief Justice."

3. Mr.R.Muthukumarasamy, learned Senior Counsel, appearing for the petitioners, would make the following submissions, by way of challenge to the Government Order, dated 28.05.1997, withdrawing tariff concession :

(a) The Government Order in G.O.Rt.No.9 of 1991, dated 11.02.1991, providing tariff concession for five years by the Government of Pondicherry is in the nature of representation/promise, assuring industries, which get energised on or after 01.03.1991, to be extended the tariff concession. The petitioners had acted on the said representation, set up industries and commenced production after spending huge amounts and, thus, altered their position. Therefore, the Government of Pondicherry is bound by the principle of promissory estoppel, to extend the said benefits for the entire period, as assured, as held in Pawan Alloys case. Hence, the order, withdrawing concession before the expiry of the period, would amount to breach of promise.

(b) Even though the Government of Pondicherry had a right to withdraw the scheme with effect from the date of the order, namely, 28.05.1997, the said order would be only a prospective effect, but, it cannot have a retrospective effect, so as to affect the rights of the petitioners, which had been accrued to the petitioners, namely, to avail tariff concession, assured by the earlier order, for the full period and the impugned order would apply only to industries, which are set up subsequent to the Government Order dated 28.05.1997 and not to the industries, which are set up and have commenced production earlier.

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(c) Though it is the stand of the Government that the Government Order dated 28.05.1997 was issued in public interest, no materials have been placed by the Government to show that there is an overriding public interest, which would render inequitable for the Government to hold on to the promise.

(d) The order passed by the First Bench in W.A.No.2081 of 1999, dated 14.01.2000, has not been correctly decided, as it has not followed the Pawan Alloys case, decided by the Supreme Court, which would squarely apply to the present case, as pointed out by the learned single Judge, who referred this matter for consideration by a Larger Bench.

4. In support of his submissions, learned Senior Counsel for the petitioners would cite the following decisions :

(i) 1995 (1) SUPREME COURT CASES 274 (KASINKA TRADING AND ANOTHER v. UNION OF INDIA AND ANOTHER) ;

(ii) 1995 SALES TAX CASE (SULOCHANA COTTON MILLS v. STATE OF TAMIL NADU)

(iii) 1997 (3) SUPREME COURT CASES 398 (SHRIJEE SALES CORPORATION AND ANOTHER v. UNION OF INDIA) ;

(iv) 1997 (7) SUPREME COURT CASES 251 (PAWAN ALLOYS & CASTING PVT. LTD., MEERUT, v. U.P.STATE ELECTRICITY BOARD AND OTHERS) ;

(v) AIR 1998 SUPREME COURT 591 (SALES TAX OFFICER v. M/S.SHREE DURGA OIL MILLS);

(vi) 1999 (4) SUPREME COURT CASES 357 (STATE OF RAJASTHAN v. MAHAVEER OIL INDUSTRIES AND OTHERS) ;

(vii) AIR 2002 SUPREME COURT 322 (M/S.SHARMA TRANSPORT v. GOVERNMENT OF A.P. AND OTHERS); and

(viii) 2003 (2) SUPREME COURT CASES 716 (HITECH ELECTROTHERMICS & HYDROPOWER LTD. v. STATE OF KERALA AND OTHERS)

5. In reply to the above points, the following

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submissions have been made by Mr.K.K.Sasidharan, Additional Government Pleader, Pondicherry, and Mr.T.S.Sivagnanam, Senior Central Government Standing Counsel :

(a) The G.O. impugned, dated 28.05.1997, contains various reasons, showing the existence of public interest. In the absence of any challenge to those reasons in the G.O.impugned and in the absence of any statement or materials placed by the petitioners to show that there is no public interest involved, it cannot be said that the decision rendered by the First Bench of this Court in W.A.No.2081 of 1999, dated 14.01.2000, is wrong, since it was based upon two judgments of the Supreme Court in Kasinka Trading v. Union of India (1995 (1) SCC 274) and Shrijee Sales Corporation v. Union of India (1997 (3) SCC 398).

(b) The Pawan Alloys case considered the facts of that case and found that there was no public interest involved. Those facts would not apply to the facts of the present case. In Pawan Alloys case, there is total absence of any involvement of public interest and, in the case on hand, there is full and complete basis of public interest, which prompted withdrawal. The Government, issuing G.O., is also an authority to recall the G.O. It is settled law that the authority, which is empowered to grant something, is also having power to cancel the same. Section 21 of the General Clauses Act contemplates such an authority.

(c) The judgment rendered by the First Bench dated 14.01.2000, negativing the doctrine of promissory estoppel, holding that there was sufficient public interest, which weighed the Government in withdrawing power subsidy, is perfectly correct and it does not require reconsideration.

6. To substantiate the above pleas, learned counsel for the respondents would cite the following authorities :

(i) AIR 1976 SUPREME COURT 2237 (EXCISE COMMISSIONER v. RAMKUMAR) ;

(ii) 1982 (1) SUPREME COURT CASES 39 (BISHAMBH DAYAL CHANDRAMOHAN v. STATE OF U.P.) ;

(iii) 1995 (1) SUPREME COURT CASES 274 (KASINKA TRADING v. UNION OF INDIA) ;

(iv) 1996 (5) SUPREME COURT CASES 268 (P.T.R.EXPORTS MADRAS (P) LTD. v. UNION OF INDIA) ;

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(v) 1996 (5) SUPREME COURT CASES 468 (DCM LIMITED v. UNION OF INDIA) ;

(vi) 1997 (3) SUPREME COURT CASES 398 (SHRIJEE SALES CORPORATION v. UNION OF INDIA) ;

(vii) 1997 (7) SUPREME COURT CASES 251 (PAWAN ALLOYS AND CASTINGS v. U.P.STATE ELECTRICITY BOARD) ;

(viii) 1998 (1) SUPREME COURT CASES 572 (SALES TAX OFFICER v. SRI DURGA OIL MILLS) ;

(ix) 1999 (4) SUPREME COURT CASES 357 (STATE OF RAJASTHAN v. MAHAVEER OIL INDUSTRIES) ;

(x) 1999 (7) SUPREME COURT CASES 314 (UNION OF INDIA v. INDIAN CHARGE CHROME) ;

(xi) UNREPORTED JUDGMENT OF MADRAS HIGH COURT IN W.A.No.2081 OF 1999 (DB) (M/S.ISAS THERMO ALLOYS v. SECRETARY TO GOVERNMENT OF PONDICHERRY) ;

(xii) 2002 (2) SUPREME COURT CASES 188 (SHARMA TRANSPORT v. GOVERNMENT OF A.P.) ;

(xiii) 2002 (128) STC 554 (DB) (DHARANI SUGAR AND CHEMICALS LTD. v. COMMERCIAL TAX OFFICER).

(xiv) 2003 (2) SUPREME COURT CASES 673 (ONKARLAL BAJAJ v. UNION OF INDIA) ;

(xv) 2003 (5) SUPREME COURT CASES 437 (UNION OF INDIA v. INTERNATIONAL TRADING COMPANY) ;

(xvi) JT 2004 (5) SUPREME COURT 231 (HIRA TIKOO v. UNION TERRITORY OF CHANDIRAGH AND ANOTHER) ;

(xvii) 2005 (1) SUPREME COURT CASES 625 (BANNARI AMMAN SUGAR LTD. v. COMMERCIAL

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TAX OFFICER) ;

(xviii) 2005 (7) SUPREME COURT CASES 348 (ROOM INDUSTRIES LTD. v. STATE OF JAMMU & KASHMIR) ;

(xix) 2005 (12) SUPREME COURT CASES 508 (BANGALORE DEVELOPMENT AUTHORITY v. HANUMAIAH) ;

(xx) 2005 (6) SCALE 613 (BRIJPAL SHARMA v. GAZIABAD DEVELOPMENT AUTHORITY); and

(xxi) 2006 (3) SCALE 178 (MAHABIR VEGETABLE OILS PVT. LTD. v. STATE OF HARYANA).

7. We have heard the learned counsel for the parties at length and given our meticulous consideration to the rival contentions, made on either side.

8. As pointed out by the counsel for the parties, it shall be remembered at the outset, that while dealing with the very same question relating to the validity of the order of withdrawal of subsidy scheme by the Government of Pondicherry in G.O.Rt.No.30 of 1997, Industries, dated 28.05.1997, the First Bench, by the order dated 14.01.2000 in W.A.No.2081 of 1999, upheld the said G.O., as valid.

9. According to Mr.Sasidharan, learned Additional Government Pleader, appearing for the respondents, namely, the Government of Pondicherry, the said order of the First Bench in W.A.No.2081 of 1999 was on the strength of the ratio decided by the Supreme Court in two cases in (i) Kasinka Trading v. Union of India (1995 (1) SCC 274) and (ii) Shrijee Sales Corporation v. Union of India (1997 (3) SCC 398) and, as such, the order of the First Bench, upholding the G.O. impugned, is justified.

10. According to Mr.Muthukumarasamy, learned Senior Counsel for the petitioners, the above two cases are distinguishable on facts. As a matter of fact, the Pawan Alloys case would squarely apply to the facts of the present case and the said case has dealt with the above two cases, distinguishing the same. But, the First Bench had no occasion to go through the Pawan Alloys case, which decided the very same issue, as it was not brought to the notice of the Division Bench at the time of final disposal and, as such, the conclusion arrived at by the First Bench, without following the Pawan Alloys case, is not correct and, therefore, it requires reconsideration.

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11. In the light of the above rival contentions, it would be better, at this stage, to refer to the reasonings given in the order of the First Bench, for upholding the G.O.impugned. The said reasonings are as follows :

> (i) The issue pertains to the claim for tariff concession under power subsidy scheme, which was introduced as a matter of policy and then later withdrawn by the Government, pursuant to its policy and the reasons contained in the order impugned. As regards the withdrawal of the scheme, it is not for this Court to adjudicate upon the reasons or the policy, behind the withdrawal of the scheme.
>
> (ii) In Sales Tax Officer v. M/s.Sri Durga Oil Mills (AIR 1998 SC 591), the Supreme Court held that withdrawal of tax exemption contrary to the industrial policy announced for a particular period cannot be questioned on the ground of plea of estoppel. In State of Rajasthan, v. Mahaveer Oil Industries (1999 (4) SCC 357), it was held that the doctrine of promissory estoppel could not preclude the Government from issuing such notification for withdrawal of tax exemption scheme, even during the currency of the exemption scheme. In the background of the rulings of the Supreme Court, if we see the order impugned, withdrawing the scheme, it is clear that it provides reasons for withdrawal in public interest.
>
> (iii) The main reason given for withdrawal of notification was that the Government considered the analysis of the power subsidy scheme, which revealed many inadequacies and shortcomings. Annually, the Union Territory was spending about Rs.5.00 crores on payment of power subsidy, which resulted in significant drain on the resources of the Union Territory and also, from the inception, the scheme helped only large/medium power intensive units.

12. The above reasonings would clearly indicate that the point urged on behalf of the counsel for the respondent State, regarding public interest, was accepted by the First Bench and it was not inclined to go into the merits of the

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rival contentions on the factual aspects, in the light of the judgments of the Supreme Court, holding that withdrawal of the subsidy cannot be questioned in view of public interest.

13. Admittedly, Pawan Alloys case, which dealt with all the cases, including the judgments referred in the judgment of the First Bench, has not been taken into consideration by the First Bench.

14. Now, Mr.Muhukumarasamy, learned Senior Counsel for the petitioners, would submit that Pawan Alloys case is exactly on the point whereas the other decisions referred in the judgment of the First Bench and cited by the learned counsel for the respondents, would decide about some other aspects, on the basis of different factual situations.

15. At this juncture, it has to be noticed that the judgment of the First Bench was rendered by Justice K.P.Sivasubramaniam, on behalf of the Bench. Now, it is noticed that the very same Judge, namely, Justice K.P.Sivasubramaniam, while sitting as a single Judge, before whom the batch of Writ Petitions were posted for final disposal, felt a doubt about the correctness of his own judgment, rendered on behalf of the First Bench, and thought it fit to refer the matter to a Larger Bench, to decide the case, in the light of the principles laid down by the Supreme Court in Pawan Alloys case, by his order dated 29.10.2004. In this context, the gist of the observation of Justice K.P.Sivasubramaniam, learned single Judge, while referring the matter to a Larger Bench, would be quite relevant, which is as follows:

> "Learned Government Pleader contends that with reference to the very same impugned Government Order and the subsidy scheme, a Division Bench of this Court, in M/S.IZAS THERMO ALLOYS V. SECRETARY TO GOVERNMENT AND OTHERS (W.A.No.2081 of 1999 - Judgment dated 14.01.2000), has held that the withdrawal of subsidy scheme was on proper grounds of public interest and hence, industries cannot claim any vested interest by application of principle of promissory estoppel.
>
> However, the learned Senior Counsel on behalf of the petitioners, contends that in all the judgments relied on by the Government Pleader, the Courts have also taken note of the facts relating to the petitioners in those

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cases and had held that on the facts of those cases, they will not be entitled to plead promissory estoppel, as those industries had commenced production only after the order of withdrawal and having regard to the observations contained in PAWAN ALLOYS case, the petitioner is entitled to invoke the principles of promissory estoppel.

I find much force in the said contention of the learned Senior Counsel for the petitioner that the case of the appellant in W.A.No.2081 of 1999 is distinguishable on the facts though the judgment deals with the very same scheme. However, I feel that, on the legal issue, the Division Bench has specifically held in paragraph 12 of the judgment that even during the currency of the scheme, the Government can withdraw the exemption scheme. The said observation has been made generally without going into the question in depth. The attention of the Division Bench was not drawn to the judgment of the Supreme Court in PAWAN ALLOYS case.

But, how far the observations of the Supreme Court in PAWAN ALLOYS case will have any relevance in the light of subsequent judgments of the Supreme Court or would have made any difference to the ultimate conclusions of the Division Bench in W.A.No.2081 of 1999 and whether on the facts of the case of the petitioners in these writ petitions, whether they would be entitled to succeed on the factual situation that they had been energised and commenced production even before the scheme was withdrawn, are all matters which could be decided by a Larger Bench. While on the very impugned proceedings and scheme, a Division Bench had upheld the withdrawal of the scheme, it may not be proper for a single Judge to express differently."

So observing, the matter has been referred to a Larger Bench.

16. The above observation of the learned single Judge Justice K.P.Sivasubramaniam would clearly indicate

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his view that the judgment rendered by the First Bench is not correct, as it had not taken into consideration the Pawan Alloys case, reported in 1997 (7) SUPREME COURT CASES 251, and if the First Bench had taken into consideration the said case, it would have taken a different view. In this context, it is to be reiterated that Justice K.P.Sivasubramaniam was the judge, who rendered the judgment on behalf of the First Bench, upholding the G.O., on the strength of the judgments of the Supreme Court, and the very same Judge, now, as a single Judge, while taking a different view, on the strength of Pawan Alloys case of the Supreme Court, has thought it fit to refer the matter to a Larger Bench.

17. Before this Full Bench, it is vehemently contended in support of the First Bench decision by Mr.Sasidharan, learned Additional Government Pleader for the respondents, namely, the Government of Pondicherry, that the concession for grant of electricity is a matter of policy of the Government and that it is open to the Government to withdraw the subsidy scheme on the ground of public interest, affecting the existing beneficiaries, and that the beneficiaries cannot plead promissory estoppel.

18. The learned Additional Government Pleader would further contend that Pawan Alloys case was decided by the Supreme Court in its factual situation, applying the law declared by the Supreme Court in the case of Shrijee Sales Corporation and the facts in the present case are neither similar nor identical to that of Pawan Alloys case. Therefore, Pawan Alloys case would not help the petitioners at all, to substantiate their plea and, as such, the said case cannot be relied upon, to decide the issue in question.

19. Arguing contra, Mr.Muthukumarasamy, learned Senior Counsel for the petitioners, would submit that the learned single Judge has now taken a correct view and, as such, the decision of the First Bench requires reconsideration, in the light of Pawan Alloys case.

20. Before going into the facts of Pawan Alloys case, let us now refer to various decisions, cited by both the counsel, laying down the principles, relating to promissory estoppel :

(i) 1997 (7) SUPREME COURT CASES 251 (PAWAN ALLOYS & CASTING PVT. LTD., MEERUT, v. U.P.STATE ELECTRICITY BOARD AND OTHERS):

> "If a statutory authority functioning on behalf of the State in exercise of its legally permissible powers has held out any promise to a party, who

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relying on the same, has changed its position not necessarily to its detriment, and if this promise does not offend any provision of law or does not fetter any legislative power inhering in the promisor, then on the principle of promissory estoppel, the promisor can be pinned down to the promise offered by it by way of representation containing such promise for the benefit of the promisee."

(ii) 1992 (2) SUPREME COURT CASES 411 (AMRIT BANASPATI CO.LTD. v. STATE OF PUNJAB) :

"The law of promissory estoppel furnishes a cause of action to a citizen, enforceable in a court of law, against the Government, if it extends any promise which creates legal relationship and it is acted upon by the promisee irrespective of any prejudice.... Acting on the assurance, both express and implied, the appellant invested substantial amount in setting up the unit requesting, in the meanwhile, for grant of written sanction from the Government, which too, came. The equity arose in favour of the appellant by having altered its position on the assurance given by the authorities. Thus, basic ingredients of promise by the Government, by which the position was altered by investing substantial amount, were established to invoke promissory estoppel against the Government.... Exemption from tax to encourage industrialisation should not be confused with refund of tax. They are two different legal and distinct concepts. Tax holiday or concession to new industries is well known to be one of the methods to grant incentive to encourage industrialisation.... The incentive to new industries by way of tax holiday or tax exemption could validly form the subject matter of promissory estoppel. This would not be against public policy. Insofar as any representation seeks to enable the promisee to get refund of the collected sales tax, it would remain unconstitutional. Therefore, it would be contrary to public policy. But on the promise for exemption from tax and relying upon the promise, the units had altered

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their position irretrievably. They have spent large amounts of money for establishing the infrastructure. Therefore, they had necessarily altered their position, relying on the representation, thinking that they would be assured of at least three years' period... On these well established facts, the Board can certainly be pinned down to its promise, on the doctrine of promissory estoppel."

(iii) 1995 (1) SCC 274 (KASINKA TRADING v. UNION OF INDIA) :

"The doctrine of promissory estoppel cannot be pressed into service, to compel the Government or the public authority, to carry out a representation or promise, which is contrary to law or which is outside the authority or power of the officer of the Government or of the public authority to make.... The Courts have to do equity. The fundamental principles of equity must for ever be present to the mind of the Court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands.

(iv) 2002 (2) SUPREME COURT 188 (M/S.SHARMA TRANSPORT v. GOVERNMENT OF A.P.) :

"The doctrine of promissory estoppel would apply to the Government also. Every one is subject to the law as fully and completely as any other and the Government is no exception. The Government cannot claim immunity from the doctrine of promissory estoppel. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government should be held bound by the promise made by it. But the Government must be able to show that in view of the fact as has been transpired, public interest would not be prejudiced. In order to resist its liability, the Government would disclose to the Court the various events insisting its claim to be exempt from liability and it would be for the Court to decide whether those events

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are such as to render it equitable and to enforce the liability against the Government.

It is equally settled law that promissory estoppel cannot be used, compelling the Government to carry out a promise which is prohibited by law or which is devoid of the authority or power of the Government.

(v) 1996 (5) SUPREME COURT CASES 468 (D.C.M. LTD. v. UNION OF INDIA) :

"It is well settled that the doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice. The basis of this doctrine is the inter-position of equity, stepped in to mitigate the rigour of strict law."

(vi) 2005 (12) SUPREME COURT CASES 508 (BANGALORE DEVELOPMENT AUTHORITY v. R.HANUMAIAH) :

"The doctrine of promissory estoppel is not based on the principle of estoppel. It is a doctrine evolved by equity in order to prevent injustice. Where a party by his word or conduct makes a promise to another person in unequivocal and clear terms intending to create legal relations knowing or intending that it would be acted upon by the party to whom the promise is made and it is so acted upon by the other party the promise would be binding on the party making it. It would not be entitled to go back on the promise made... The principle of promissory estoppel would be applicable to the Government as well where it makes a promise knowing or intending that it would be acted upon by the promisee, and the promisee in fact acting on the promise alters his position, then the Government will be held bound by the promise and such a promise would be enforceable against the Government, at the instance of the promisee. The Government stood on the same footing as a private individual, so far as the obligation of law is concerned."

21. From the above decisions, the following

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guidelines would emerge, with regard to promissory estoppel :

> (1) If a statutory authority functioning on behalf of the State, in exercise of its legally permissible powers has held out any promise to a party, who relying on the same, has changed its position, then, on the principle of promissory estoppel, the promisor can be pinned down to the promise offered by it, by way of representation, containing such promise for the benefit of the promisee.
>
> (2) The doctrine of promissory estoppel cannot be pressed into service, to compel the Government, to carry out a representation or promise, which is contrary to law or which is outside the authority.
>
> (3) The doctrine of promissory estoppel would apply to the Government also. The Government cannot claim immunity from the doctrine of promissory estoppel.
>
> (4) The principle of promissory estoppel would be applicable to the Government as well, where it makes a promise knowing or intending that it would be acted upon by the promisee, and the promisee in fact acting on the promise alters his position, then the Government will be held bound by the promise and such a promise would be enforceable against the Government, at the instance of the promisee.

22. In the light of the above guidelines laid down by the Supreme Court in the judgments cited supra, let us now go into the facts and the finding rendered in Pawan Alloys case. It is a case where the appeals were filed by the appellants, who are consumers of electricity supplied by the respondent, U.P.State Electricity Board, with the grievance that the notifications, providing rebate on the charge of electricity, as an incentive to start new industries for a period of three years, had been withdrawn premature. According to the appellants, three notifications were issued by the respondent Board, in exercise of its powers under Section 49 of the Electricity (Supply) Act,1948, holding out a promise to new industries, seeking to establish industries in different parts of U.P. that on the charges of electricity consumption by them,

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they will be given a rebate of 10% for a period of three years from the date of commencement of supply of electricity to them for the first time. Later, on 31.07.1986, that is even before the expiry of three years, the respondents prematurely had withdrawn the concession of the said rebate. The said notification was impugned in the proceedings. The main question before the High Court, which was raised in those proceedings, was as follows :

> "Whether the Board is estopped from withdrawing the said rebate before the completion of three year period, by virtue of the doctrine of promissory estoppel ?"

22.1. The High Court ultimately came to the conclusion that the respondent Board was estopped by virtue of doctrine of promissory estoppel from withdrawing the rebate before the completion of the period of three years.

22.2. The matter was taken to the Supreme Court by the Board. Before the Supreme Court, the decisions in Kasinka Trading v. Union of India (1995 (1) SUPREME COURT CASES 274) and Shrijee Sales Corporation v. Union of India (1997 (3) SUPREME COURT CASES 398) were cited by the Board, to show that it was open to the respondent Board to withdraw the concession or rebate even before the expiry of the period, on the ground of public policy and the doctrine of promissory estoppel cannot be pressed into service for imparting such an exercise by the Board.

22.3. While rejecting the said contention, the Supreme Court distinguished the above two decisions and held in Pawan Alloys case, that the Board was estopped, by virtue of the doctrine of promissory estoppel. The following is the observation :

> "In the case of Kasinka Trading (1995 (1) SCC 274), Dr.A.S.Anand, J. had to consider the question whether a notification granting complete exemption from payment of customs duty, which was issued in public interest, up to 31.03.1981, could be withdrawn before the expiry of said period by a fresh notification.
>
> The Supreme Court, speaking through Dr.Anand, J., took the view that as the said notification was issued in public interest it could be withdrawn even before the time fixed therein for its operation also in public interest and while issuing

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such a notification no promise can be said to have been held out or any representation made to the importers in general on the basis of which they could insist on the doctrine of promissory estoppel. The notification, which was impugned, was not designed or issued to induce the appellants to import PVC resin. Admittedly, the said notification was not even intended as an incentive for import. Strictly speaking, the said notification, merely stating "being satisfied that it was necessary in the public interest so to do" could not be said to have been extended any 'representation' much less a 'promise' to a party getting the benefit of it, to enable it to invoke the doctrine of promissory estoppel against the State. It must, therefore, be held that the aforesaid decision had clearly proceeded on the basis that by issuing the earlier notification, no promise was held out to any of the importers. Under the changed circumstances, public interest itself required reduction of such an exemption and as no promise was held out, the Court, on the facts of that case, justifiably rejected the doctrine of promissory estoppel.

The next case is Shrijee Sales Corporation v. Union of India (1997 (3) SUPREME COURT CASES 398), wherein A.M.Ahmadi, C.J., speaking for the Bench considered the correctness of the aforesaid decision in Kasinka Trading. A.M.Ahmadi, C.J., while upholding the notification in Shrijee Sales Corporation, would hold that the principle of promissory estoppel is applicable against the Government, but in case there is a supervening public equity, the Government would be allowed to change its stand and to withdraw the representation made by it, which induced persons to take certain steps. It is only if the Court is satisfied, on proper and adequate material placed by the Government that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the

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Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability and the burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden."

23. The above finding would make it clear that, while distinguishing the above two cases, the Supreme Court, in Pawan Alloys case, has clearly held that as there is no promise or representation held out in those cases, those decisions would not apply to the facts of the said case. While analysing these two cases, the Supreme Court would refer to the two propositions which follow from the analysis of those two decisions (i) the determination of applicability of promissory estoppel against public authority/Government hinges upon balance of equity or 'public interest' and (ii) it is the Court which has to determine whether the Government should be held exempt from the liability of the 'promise' or 'representation'.

24. On the basis of those propositions, the Pawan Alloys case proceeded to go into the facts of the case whether the notification impugned issued in that case had held out any promise on the basis of which the promisee had acted and if public interest required recall of such a promise and such a public interest outweighed the interest of the promisee then the doctrine of promissory estoppel against the Government would lose its rigour and cannot be of any avail to such promisee.

25. In the light of the settled legal position as referred to above, the Supreme Court would refer to the facts in that case, in order to find out whether any such a representation or promise was held out by the Government. The relevant observation of the Supreme Court, with reference to the wordings contained in the notification in question in that case, is given below :

"A mere look at this item shows that all the aforesaid three notifications which held the field from 29-10-1982 to 28-1-1986 clearly contained a representation by the Board to the consumers, who were to establish

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new industrial units in the territories of the State in which the Board was to supply electricity, that on the total bill of electricity consumed by them during the period of first three years of their taking supply they will be getting a rebate of 10% on the total amount of such bills for electricity consumption. It was also assured that this rebate would be available not only to new industrial units which may get established and which may take electric supply from the Board on and from the date on which the said last notification of 28-1-1986 came into force, but rebate would be permissible even to those new industries who had earlier established their industries and taken electricity supply from the Board and three years' period earlier granted to them for earning development rebate had remained unexpired on 1-2-1986 and for that entire unexpired period also the said development rebate was guaranteed by the Board. This obviously can be said to have been an incentive offered by the Board in exercise of its statutory powers."

"As a result of the aforesaid discussion, it must be held that the finding reached on the question of promissory estoppel by the High Court on Issue No.1 is well sustained. The respondent-Board must be treated to be estopped from prematurely withdrawing the incentive development rebate made available to these appellant-industries by issuing the impugned notification. Point No.1 is accordingly answered in the affirmative in favour of the appellants and against the Board. This takes us to the consideration of the main question on which the High Court held against the appellants."

26. So, on facts, in the light of the contents of three notifications, it was held in that decision that the three notifications issued by the Board were part and parcel of the incentive scheme. In other words, the Supreme Court held on facts of Pawan Alloys case that this notification did hold out a promise or representation to the public, enabling the new industries to get established,

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acting on the said representation.

27. On the strength of the above finding, it was further held by the Supreme Court that promissory estoppel would apply to the said case and, in that event, it is for the Government to prove to the satisfaction of the Court by placing proper and adequate materials that overriding public interest requires that the Government should not be held bound by the promise. It was also held by the Supreme Court that the Court would not act on the mere ipse dixit of the Government, for which it is the Court to decide and not the Government whether the Government should be held exempt from liability. In other words, the burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise. Also, the Court would insist on a highly rigorous standard of proof in the discharge of this burden.

28. In the light of the above principles laid down in Pawan Alloys case, let us now come to the facts of the present case.

29. Let us now see the first notification, namely, G.O.Rt.No.9 of 1991, dated 11.02.1991, granting tariff concession, which reads as follows :

"GOVERNMENT OF PONDICHERRY
DEVELOPMENT DEPARTMENT
(INDUSTRY)
(G.O.RT.NO.9/91-IND, DATED 11TH FEBRUARY 1991)
O R D E R

The power subsidy scheme was implemented by this Union Territory Administration since the year 1975. In its earlier form, the scheme envisaged payment of 7 paise per unit of consumption for subsequently revised in April 1985. It now envisages subsidy for a period of 3 years at 33 1/3 % for the fourth year 20% and for the fifth at 10%. Due to the upward revision of power charges in the past years, there was corresponding increase for the payment of proportionate subsidy to the industries. Accordingly, the quantum of subsidy disbursed to new industries has now increased to Rs.462.00 lakhs in 1989-90 from 6.9 lakhs in 1982-83. The main reason for the increase in expenditure under the scheme is not only due to revising of tariff from 1985 but also due to the increase in the number of power based industries during the

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VII Plan period. At the time of formulations of the scheme, the intention was no doubt to encourage the proliferation of industry within the territory. In actual practice, the scheme has attracted many power intensive units which are using power be one of the inputs for production.

2. In view of the fact that the scheme is helping only a handful of large industries with limited employment, necessity was felt to modify the scheme, not only on the lines suggested by the Planning Commission but also to reduce the heavy drain of plan funds. The Planning Commission in the past years has been repeatedly advising not to encourage power based industries.

3. In view of the above, the modified scheme was included in the Annual Plan 1990-91 and submitted on the Planning Commission for approval. The Planning commission has also approved the modified scheme and earmarked funds in the Annual Plan 1990-91.

4. Based on the above, the Director of Industries has now submitted a proposal vide Letter No.1345/Ind/89-92/A8/PSS dated 9th January 1990 from the Industries Department, Pondicherry, and requested for approval. He has also stated that the present scheme has ended up, by encouraging only the growth of large and medium industries which are using power as raw material for production instead of promoting more labour intensive industries.

5. After careful consideration and taking into account various factors mentioned above, the Lieutenant Governor has been pleased to revise the Power Scheme as under :

1. For Pondicherry and Yanam Regions

All Small Industries which are energising on or after 01.03.1991 consuming Low Tension Power alone are eligible for subsidy for the energy charges paid by them at the following rate subject to a limit of Rs.1.00 lakh per month.

(i) 33 1/3% for a period of three

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years

(ii) 20% for the fourth year
(iii) 10% for the fifth year

No power subsidy will be paid from sixth year onwards. All other industries consuming High Tension Power and those coming under the category of medium and large scale industry will not be eligible of any power subsidy.

(ii) For Karaikal and Mahe Regions

All the new low tension and high tension industries which are energised on or after 01.03.1991 are eligible for power subsidy at the rate subject to a limit of Rs.1.00 lakh per month as follows :

(i) 33 ½ % for a period of three years

(ii) 20% for the fourth year
(iii) 10% for the fifth year

No power subsidy will be paid from 6th year onwards.

6. All industries including large and medium which have been issued with power feasibility certificate by the Superintending Engineer (Electricity) before 01.03.1991 and have taken effective steps viz 60% or more of the capital issued of the industrial unit, has been paid up and a substantial portion of the factory building have been constructed and a firm order has been placed for substantial part of the plant and machinery required for the industrial unit will be governed by the existing power subsidy scheme in operation during VII Plan period. In case of any dispute on the interpretation of this para, the decision the Government shall be final.

7. The issues with the concurrence of the Finance Department vide their U.O.No.3561/91/F-3 dated 16.01.1661.

(BY ORDER OF THE LIEUTENANT GOVERNOR)
A.RAMALINGAM
UNDER SECRETARY TO GOVERNMENT (IND.)"

30. A reading of the above G.O. would clearly indicate that since the year 1975, the Government of

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Pondicherry has been implementing the Power Subsidy Scheme, providing for tariff concession and electricity supply for the industrial units which were established within the Union Territory of Pondicherry. The quantum of concession varied from time to time. The aforesaid revised scheme was issued, taking into account various factors like increased quantum of subsidy that was being disbursed, that such a scheme was helping only larger industries with limited employment etc.

31. The above G.O.Rt.No.9 of 1991, dated 11.02.1991, was issued, revising the power subsidy scheme, as per which all the industries, which came to be established and are energised on or after 01.03.1991, are eligible for power subsidy, for a period of five years.

32. The object behind the notification issued from time to time based on which the petitioners had set up the industry is to encourage setting up of high tension new industries being encouraged by the industrial policy of the Government of Pondicherry and the tariff concession provided. The petitioners have set up the industry in the territory, only on the assurance that on the setting up of such industry they will be provided with power subsidy by the Electricity Department.

33. Thus, in terms of the above scheme, all industries, including the small scale industries, which came to be energised on or after 01.03.1991, were eligible for tariff concession. It is clear that the aforesaid orders were in the nature of incentive, offered to encourage setting up of industries, including small scale industries.

34. There is no dispute in the fact that each of the petitioner industries came to be established only subsequent to the introduction of the above incentive scheme. The petitioners invested huge moneys and took pains in setting up of the industries, in the light of the concession granted through the Subsidy Incentive Scheme. Therefore, it is clear that the order in G.O.Rt.No.9 of 1991, dated 11.02.1991, providing for tariff concession, is in the nature of representation/promise, assuring the industries, which get energised on or after 01.03.1991, the extended tariff concession and the petitioners had acted on the said representation and set up industries, spending huge amounts and, thus, altered their position.

35. Under those circumstances, it has to be held that the Government of Pondicherry is bound by the principle of promissory estoppel, to extend the said

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benefits for the entire period, as assured. Consequently, the Pawan Alloys case, 1997 (7) SUPREME COURT CASES 251, would squarely apply to the facts of the present case.

36. It is nextly contended by the learned counsel for the Government that withdrawal of the G.O. by the Government was only in public interest and, therefore, the question of promissory estoppel cannot be pressed into service.

37. Let us now see the decisions, dealing with public interest:

(i) 1979 (2) SUPREME COURT CASES 409 (MOTILAL PADAMPAT SUGAR MILLS CO. LTD. v. STATE OF U.P.) :

> "It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. However, the Court would not act on the mere ipse dixit of the Government. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming. The Court would insist on a highly rigorous standard of proof in the discharge of this burden. But, when there is no such overriding public interest, it may still be competent to the Government to resile from the promise 'on giving reasonable notice, giving promisee a reasonable opportunity of resuming his position', provided it is possible for the promisee to restore status quo ante. If the promisee cannot resume his position, the promise would become final and irrevocable."

(ii) 2003 (2) SUPREME COURT CASES 673 (ONKAR LAL BAJAJ v. UNION OF INDIA) :

> "The expression "public interest" cannot be put in a straitjacket. "Public interest" takes into its fold several factors. There cannot be any hard-and-fast rule to determine what is public interest. The circumstances in each case would

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determine whether Government action was taken in public interest."

(iii) 2003 (5) SUPREME COURT CASES 437 (UNION OF INDIA v. INTERNATIONAL TRADING CO.) :

"Doctrine of promissory estoppel cannot come in the way of public interest. Indisputably, public interest has to prevail over private interest. The case at hand shows that a conscious policy decision has been taken and there is no statutory compulsion to act contrary.

A change in policy must be made fairly and should not give the impression that it has been so done arbitrarily."

(iv) 1998 (1) SUPREME COURT CASES 572 (SALES TAX OFFICER v. SHREE DURGA OIL MILLS) :

"Withdrawal of notification was done in public interest. The Court will not interfere with any action taken by the Government in public interest. Public interest must override any consideration of private loss or gain.

In our opinion, the plea of change of policy trade on the basis of resource crunch should have been sufficient for dismissing the claim, based on the doctrine of promissory estoppel."

(v) 1999 (7) SUPREME COURT CASES 314 (UNION OF INDIA v. INDIAN CHARGE CHROME) :

"Where the Government on the basis of the material available before it is satisfied bona fide that the public interest would be served by either granting exemption or by withdrawing, modifying or rescinding an exemption already granted it should be allowed a free hand to do so. What was given in public interest can also be curtailed in public interest."

(vi) JT 2004 (5) SC 231 (HIRA TIKKOO v. UNION TERRITORY OF CHANDIGARH) :

"Where public interest is likely to be harmed, neither the doctrine of

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'legitimate expectation' nor 'estoppel' can be allowed to be pressed into service by any citizen against the State authorities."

38. From the above decisions, the following guidelines would emanate, with regard to public interest :

(1) Doctrine of promissory estoppel cannot come in the way of public interest. Indisputably, public interest has to prevail over private interest. A change in policy must be made fairly and should not give the impression that it has been so done arbitrarily."

(2) Where the Government on the basis of the material available before it is satisfied bona fide that the public interest would be served by withdrawing an exemption already granted, it should be allowed a free hand to do so. Where public interest is likely to be harmed, neither the doctrine of 'legitimate expectation' nor 'estoppel' can be allowed to be pressed into service against the State authorities.

(3) It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. However, the Court would not act on the mere ipse dixit of the Government. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming. The Court would insist on a highly rigorous standard of proof in the discharge of this burden.

(4) Even when there is no such overriding public interest, it may still be competent to the Government to resile from the promise 'on giving reasonable notice, giving promisee a reasonable opportunity of resuming his position', provided it is possible for the promisee

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to restore status quo ante. If the promisee cannot resume his position, the promise would become final and irrevocable."

39. In the light of the above guidelines, let us now see G.O.Rt.No.30, Industries, dated 28.05.1997, withdrawing tariff concession :

"GOVERNMENT OF PONDICHERRY
DEPARTMENT OF INDUSTRIAL DEVELOPMENT
(INDUSTRY)
(G.O.Rt.No.30/97-Ind., dated 28th May 1997)
ORDER

The matter of withdrawal of the Power Subsidy Scheme for industries operating in this Union Territory has been engaging the attention of the Government of Pondicherry for some time past and an analysis of the Power Subsidy Scheme has revealed multifarious inadequacies and shortcomings :

(a) Annually, this Union Territory Government spends about Rs.5 crores on payment of power subsidies to industrial units during the first 4 years of the VIII Plan which is a significant drain on the resources of this Union Territory.

(b) The scheme almost from its inception has helped only large/medium power intensive industries with 96% of the total subsidy going to them. Even here 13% of the large/medium industries have taken 66% of the total subsidy paid.

(c) It has helped in the proliferation of power intensive industries particularly in metals and chemicals which have also turned to be the most pollutive. Pollution today has become one of the major issues in this Union Territory.

(d) These power intensive industries have not significantly contributed to direct employment generation, although there has been some more indirect employment created.

(e) The scheme with its generous features does not promote power

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conservation in industries. Areas of operation, where cost-cutting is necessary, do not become evident, as the subsidies cushion the losses caused by operational inefficiencies.

(f) The Central Investment Subsidy Scheme in the past and tax holidays now have far more fiscal significance in the decision to locate/continue to operate an industry in Pondicherry than the power subsidy scheme.

(g) The withdrawal of the power subsidy would not cause a flight of medium/large industries from Pondicherry as the advantages tax benefits enjoyed and the lower cost of power/fuel etc. than the neighbouring States are sufficient incentives.

2. In the above circumstances and after careful consideration of all the aspects in this regard, the Government has decided to withdraw the scheme of power subsidy with effect from 1-4-1997.

V.KUPPUSAMY,
Under Secretary to Government (Ind.)."

40. A perusal of the above G.O. would indicate that the reasonings given for withdrawal of power subsidy would not reveal that public interest would be suffered. As a matter of fact, the word "public interest" is conspicuously absent.

41. As indicated above, the Court cannot accept the ground of 'public interest', on the mere ipse dixit of the Government in the G.O. or the counter. It is the Court, which has to decide and not the Government whether the Government should be held exempt from liability. The burden would be completely upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the said promise against the Government.

42. In fact, the Supreme Court would categorically hold in State of Rajasthan v. Mahaveer Oil Industries (1999 (4) SCC 357) that the materials placed before the Court

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must disclose that the object with which the benefits were sought to be given were completely frustrated and, therefore, equity demanded the Government to withdraw the scheme.

43. In the present case, there are no materials whatsoever placed before the Court by the respondents, namely, the Government of Pondicherry, to show that there are overwhelming materials, which would outweigh the benefits to the petitioners and enable the Government to withdraw the promise. All that is claimed in the counter is, a repetition of the order impugned. The main reason given is the financial commitment. The Government was fully aware of it, which was about Rs.4.62 crores in the year 1992, which is now said to be Rs.5.00 crores in the year 1997. The fact that power intensive industries and heavy industries were also availing concession was also known. Therefore, there is no basis for any of the reasons stated in the affidavit, to satisfy the ground of public interest or supervening equity, which would alone enable the Government, to withdraw the promise.

44. As we have seen earlier, a clear-cut scheme of subsidy for new small scale industries was put forward by the Government of Pondicherry, so that more and more industries would be attracted to the State. It is true that in case there is a supervening public equity, the Government would be allowed to change its stand and the Government would then be able to withdraw from the representation made by it, which induced persons to take certain steps, which may have gone adverse to the interest of such persons, on account of such withdrawal. However, the Court must satisfy itself that such a public interest exists. In other words, it is only if the Court is satisfied on proper and adequate materials placed by the Government that overriding public interest requires that the Government should not be held bound by the promise, that the Court would refuse to enforce the promise against the Government.

45. As indicated above, the Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that public interest in the Government acting otherwise than in accordance with the promise is so overwhelming and that it would inequitable to hold the Government bound by the promise. For deciding the said question, the Court would insist on a highly rigorous standard of proof in the discharge of this burden.

46. In this case, no materials have been placed by

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the Government to show that there is an overriding public interest and supervening pubic equity, which can override individual equity. Of course, it is settled that even when there is no such overriding public interest, it may still be competent to the Government to resile from the promise 'on giving reasonable notice, giving promisee a reasonable opportunity of resuming his position', provided it is possible for the promisee to restore status quo ante. If the promisee cannot resume his position, the promise would become final and irrevocable. Admittedly, in this case, this mode has not been adopted at all.

47. Therefore, in the absence of any materials placed before the Court relating to supervening equity or public interest and in the absence of giving reasonable notice, giving promisee a reasonable opportunity of resuming his position to restore status quo ante and also in the light of the fact that the promisees in these cases admittedly invested substantial amounts in setting up the units, acting on the assurance, both express and implied, by the Government and altered their positions by commencing the production, by which status ante cannot be restored, there is no difficulty for this Court in holding that Pawan Alloys case would squarely apply to the present case and, consequently, the petitioners are entitled to the benefits of the earlier G.O., based on the principle of promissory estoppel, which is not affected by the so called public interest, which has not been established by the Government.

48. In the light of the above discussion, we will now come to the observation made by the First Bench in the judgment in W.A.No.2081 of 1999, dated 14.01.2000, in para 12, as referred to by the learned single Judge. Para 12 of the said judgment reads as follows :

> "12. In State of Rajasthan Vs Mahaveer Oil Industries (1999 (4) S.C.C.357), the Supreme Court examined the tenability of the withdrawal of tax exemption scheme even during the currency of exemption scheme. The Sales Tax Incentive Scheme for Industries 1987 was notified by the Rajasthan Government, exempting subject to certain conditions, new industrial units from tax under the State Act as well as the Central Act on sale of goods manufactured by them for sale out of the State for a specified period. Even during the currency of the scheme, the Government notified the oil extraction and manufacturing industry in Annexure B to the scheme thereby rendering

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> the said industry ineligible for the benefit of the scheme. On facts, the Government found that the scheme had failed to achieve its object and had rather adversely affected the oil industry. Therefore, it was held that the doctrine of promissory estoppel could not include the Government from issuing such notification. With the result, notification was held to be valid."

49. A reading of the above judgment, including para 12, would clearly indicate that the Writ Petition was dismissed by the First Bench, mainly on the ground that the petitioner was not entitled to the benefit of G.O.Rt.No.9 of 1991, dated 11.02.1991, on the ground that it had not commenced production prior to G.O.Rt.No.30, dated 28.05.1997. The said conclusion, in our view, is correct.

50. As pointed out by the learned single Judge, para 12 in the judgment of the First Bench, giving observation that even prior to the currency of the scheme the Government can withdraw the exemption scheme, is only general, without going into the question in depth. In other words, the said observation is unnecessary, for deciding the question raised in that Writ Petition, as that Writ Petition only dealt with the matter, where the petitioner had commenced production only after issuance of G.O., withdrawing the subsidy scheme. However, we want to make it clear that the said observation is also wrong, in view of the fact that the same is not in consonance with the principles laid down by the Supreme Court in Pawan Alloys case, wherein it is held that once a promise is held out, it cannot be withdrawn during the current period. Further, it is to be pointed out that the said observation is not a ratio decidendi, which has got a finding effect.

51. In this case, there are seven petitioners. Out of the seven petitioners, five petitioners have energised their units and commenced production, even prior to the date of G.O., dated 28.05.1997, withdrawing subsidy. So far as the petitioners in W.P.Nos.3735 and 3736 of 2001 are concerned, the industries had not been set up and production was not commenced prior to the date of the order impugned, dated 28.05.1997.

52. Hence, all the writ petitioners, except the petitioners in W.P.Nos.3735 and 3736 of 2001, are entitled to the benefit of power tariff concession for the remaining period, as per G.O.Rt.No.9 of 1991, dated 11.02.1991. Consequently, all the Writ Petitions, except W.P.Nos.3735 and 3736 of 2001, are allowed. No costs.

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53. SUM UP :

(1) The Government Order of Union Territory of Pondicherry in G.O.Rt.No.9 of 1991, dated 11.02.1991, providing for power tariff concession is in the nature of representation/promise, assuring the industries, which get energised on or after 01.03.1991, to be extended tariff concession. The petitioners had acted on the said representation and set up industries, spending huge amounts and, thus, altered their position. Therefore, the Government of Pondicherry is bound by the principles of promissory estoppel, to extend the said benefit for the entire period of five years.

(2) Though 'public interest' is pleaded by the Government, the Government has not placed proper and adequate materials before the Court to the effect that overriding public interest requires that the Government should not be held bound by the promise and, consequently, the burden of the Government for placing the materials to show that there is an overriding public interest has not been discharged.

(3) Since on the assurance the units have been set up by the petitioners and production has been commenced by spending huge amounts, the G.O.Rt.No.30, dated 28.05.1997, cannot have the retrospective effect, so as to affect the rights of the petitioners, which have been accrued to them, namely, to avail tariff concession, assured by the earlier G.O.Rt.No.9 of 1991, dated 11.02.1991, for a period of five years, and the impugned order would apply to the industries, which are set up subsequent to the G.O., dated 28.05.1997.

(4) The observation made by the First Bench in Para 12 of the judgment in W.A.No.2081 of 1999, dated 14.01.2000, relating to the withdrawal of exemption scheme even during the currency of the scheme is not a ratio decidendi and it is only an observation. Even the said

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observation may not be correct, in view of Pawan Alloys case.

(5) All the Writ Petitions, except W.P.Nos.3735 and 3736 of 2001, are allowed. No costs.

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Sd/

Asst.Registrar

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Sub Asst.Registrar

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TO

1.Government of India,
Ministry of Industry,
Department of Industrial Development
SSI (P) Section,
Udyog Bhavan,
New Delhi.

2.Director,
Industries Department,
Thattan Chavadi,
Pondicherry.

3.The Secretary,
Industries Department,
Pondicherry.

4.The Secretary,
Department of Power,
Pondicherry.

5.The Superintending Engineer,
Electricity Department,
Pondicherry

+ ONE CC TO MR. C. S. Krishnamoorthy, Advocate sr no. 25613
+ ONE CC TO M/S. T.S. SIVAGNANAM, SCGSC SR NO. 25580
+ ONE CC TO M/S. ANAND, ABDU & VINOD ASSOCIATES ADVOCATE SR NO. 25552
+ 7 CC TO THE GOVERNMENT PLEADER (PONDY) HIGH COURT, SR NOS. 25625, 25632 TO 25637)

MKJ(CO)
NM(12.07.2006)

W.P.No.16669 OF 1999 BATCH

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